

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Communications Assistance for Law	)	ET Docket No. 04-295
Enforcement Act and Broadband Access	)	
and Services	)	
	)	RM-10865
	)	

**REPLY COMMENTS OF**

**COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION, INFORMATION  
TECHNOLOGY ASSOCIATION OF AMERICA, ACORN ACTIVE MEDIA,  
ASSOCIATION FOR COMMUNITY NETWORKING, CENTER FOR DEMOCRACY &  
TECHNOLOGY, CENTER FOR FINANCIAL PRIVACY AND HUMAN RIGHTS,  
CHAMPAIGN URBANA COMMUNITY WIRELESS NETWORK, ELECTRONIC  
FRONTIER FOUNDATION, AND THE TEXAS INTERNET SERVICE PROVIDERS  
ASSOCIATION**

**IN SUPPORT OF THE PETITION FOR RECONSIDERATION AND CLARIFICATION  
OF THE CALEA APPLICABILITY ORDER**

The undersigned Industry and Public Interest Commenters submit these Reply Comments in Support of the Petition for Reconsideration and Clarification of the CALEA Applicability Order<sup>1</sup> filed by the United States Telecom Association (“USTA”).

The core of the only comments filed in opposition to the USTA petition – those filed by the U.S. Department of Justice<sup>2</sup> and by VeriSign<sup>3</sup> -- is that the there is no need for the Commission to clarify what CALEA compliance “mean[s] in a broadband environment”<sup>4</sup>

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<sup>1</sup> *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order, 20 FCC Rcd 14989 (2005) (“First R&O”).

<sup>2</sup> Opposition of the United States Department of Justice to Petition for Reconsideration Filed by the United States Telecom Association, ET Docket 04-295 (filed Jan. 19, 2006) (“DOJ Comments”).

<sup>3</sup> Opposition of VeriSign, Inc., ET Docket 04-295 (filed Jan. 19, 2006) (“VeriSign Comments”).

<sup>4</sup> First R&O, ¶ 46.

because it is already well known what CALEA would require of broadband and VoIP providers (citing to on-going discussions in certain telephony-focused standards bodies).<sup>5</sup> A review of the broad array of commenters supporting USTA's petition, however, shows that both DOJ and VeriSign are incorrect in their assertions. Collectively, the identity of all entities supporting reconsideration makes clear that the affected industries do *not* know what CALEA compliance means in the broadband context. Indeed, it is hard to imagine a broader collection of associations representing all types of communications services providers:

- United States Telecom Association (“the premier trade association representing service providers and suppliers for the telecom industry. The USTelecom Association's 1,200 member companies offer a wide range of services, including local exchange, long distance, wireless, Internet and cable television service. USTelecom's members provide local telephone service across the country, ranging from the very largest telecom companies . . . to companies with only a few hundred customers.” See [http://www.ustelecom.org/index.php?urh=home.about\\_ustelecom](http://www.ustelecom.org/index.php?urh=home.about_ustelecom))
- Telecommunications Industry Association (“the leading U.S. non-profit trade association serving the communications and information technology industry.” See <http://www.tiaonline.org/about/overview.cfm>)
- National Telecommunications Cooperative Association (“the premiere non-profit association representing more than 560 small and rural telephone cooperatives and commercial companies.” See [http://www.ntca.org/ka/ka-2.cfm?Folder\\_ID=44](http://www.ntca.org/ka/ka-2.cfm?Folder_ID=44))
- Organization for the Promotion and Advancement of Small Telecommunications Companies (“a national trade association representing more than 550 small, independently owned local exchange carriers . . . and their affiliate telecommunications companies.” See <http://www.opastco.org/about.htm>)
- Information Technology Association of America (“[ITAA] provides global public policy, business networking, and national leadership to promote the continued rapid growth of the IT industry. ITAA consists of over 325 corporate members throughout the U.S. The Association plays the leading role in issues of IT industry concern including information security, taxes and finance policy, digital intellectual property protection, telecommunications competition, workforce and education, immigration, online privacy and consumer protection, government IT procurement, human resources and e-commerce policy. ITAA members range from the smallest IT start-ups to industry leaders in the Internet, software, IT services, ASP, digital content,

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<sup>5</sup> See DOJ Comments at 7-8; VeriSign Comments at 2-7.

systems integration, telecommunications, and enterprise solution fields.” *See* <http://www.itaa.org/newsroom/release.cfm?ID=2246>)

- Computer & Communications Industry Association (“a nonprofit membership organization for a wide range of companies in the computer, Internet, information technology, and telecommunications industries, represented by their senior executives. . . . Our companies vary widely in size and operate both domestically and globally. Members include computer and communications companies, equipment manufactures, software developers, service providers, re-sellers, integrators, and financial service companies.” *See* <http://www.ccianet.org/modules.php?op=modload&name=about&file=index&POSTNUKESID=386098d3952af0e1dfabcdea86ff11e1>)
- VON Coalition (“consists of leading VoIP companies, on the cutting edge of developing and delivering voice innovations over Internet.” *See* <http://www.von.org/info.asp>)
- CTIA - The Wireless Association (“an international organization representing all sectors of wireless communications – cellular, personal communication services and enhanced specialized mobile radio. [CTIA] represent[s] service providers, manufacturers, wireless data and Internet companies and other contributors to the wireless universe.” *See* <http://www.ctia.org/aboutCTIA/index.cfm>)
- Satellite Industry Association (“the premier trade organization representing global commercial satellite industry. SIA's executive member companies are the leading satellite operators, service providers, satellite manufacturers, launch services companies, value-added resellers and ground equipment suppliers.” *See* [http://www.sia.org/about\\_sia/](http://www.sia.org/about_sia/))
- American Library Association (“the oldest and largest library association in the world, with more than 64,000 members.” *See* <http://www.ala.org/>).
- Association of Research Libraries (a “not-for-profit membership organization comprising the libraries of North American research institutions.” *See* <http://www.arl.org/arl/activities/2004/>)
- Association of College and Research Libraries (“a professional association of academic librarians and other interested individuals.” *See* <http://www.ala.org/ala/acrl/aboutacrl/whatisacrl/whatacrl.htm>)
- Association For Community Networking (“an educational nonprofit corporation dedicated to fostering and supporting "Community Networking" -- community-based creation & provision of appropriate technology services of the highest quality with a broad range of uses.” *See* <http://www.afcn.org/node/29>)

- Texas Internet Service Providers Association (“a nonprofit organization committed to advocate and support a healthy Internet industry” in Texas. *See* <http://www.tispa.org/who/index.htm>)

With almost the entire universe of the communications and Internet industries saying to the Commission that “we do not know what CALEA means in the broadband context,” the bald assertions to the contrary by DOJ and a single company (a company that not coincidentally is in the business of selling CALEA compliance services) cannot be given any credence. It is undeniable that the Commission’s First Report and Order has led to a dramatic amount of uncertainty across the communications and Internet industries. Until the uncertainty is addressed, the Commission should stay the ticking compliance clock.

In addition to incorrectly asserting that everyone already knows what CALEA means, the Department of Justice also argues that the Commission need take no further action because the CALEA statute is “self-executing.” *See* DOJ Comments at 3-7. This argument is incorrect for at least two reasons, one historical and one based on the statutory language itself.

First, DOJ’s suggestion that efforts towards CALEA compliance should proceed without any further guidance from the Commission wholly ignores the dramatic differences between the CALEA’s application to the PSTN and its application to the Internet. *Before* CALEA was passed in 1994 a number of critical facts were already known. Before passage it was established (through Congressional hearings and industry-government-public interest meetings undertaken at the behest of Congress) what were the problems in the PSTN that CALEA needed to solve, and which small number of specific companies were obligated by CALEA to address those problems. In stark contrast, in this instance there is no information whatsoever in the record of what problems need to be solved by CALEA (if any such problems exist), nor is there any clarity as to which of the vastly larger array of companies and other institutions might in fact be subject to

CALEA under the Commission's new order. It is striking that in 1994 USTA was the lead industry representative in discussions with Congress and the Executive Branch about what CALEA should cover, but in 2006 that same association is the lead industry organization asking the Commission to clarify its Order and defer compliance until such clarification.

Second, and more fundamentally, the CALEA statute itself makes crystal clear that as part of any extension of CALEA, the Commission must undertake a careful evaluation of the public interest, including the impact on privacy and security, of any such extension. Because as the Commission has plainly stated it has not yet decided (or at least has not yet announced) what CALEA compliance means in the broadband context, the Commission has not completed the public interest analysis required by the statute. Until that analysis is complete, no one will be able to determine what is required, or who is covered, by an extension of CALEA to the Internet.

For the foregoing reasons, the Commission should grant USTA's Petition for Reconsideration and For Clarification of the CALEA Applicability Order, and should reset any clock for compliance to start only after the publication of subsequent orders of the Commission answering the host of questions that remain unanswered.

SUBMITTED ON BEHALF OF:

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COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION  
ELECTRONIC FRONTIER FOUNDATION  
INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA  
TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION

Respectfully submitted,

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